

Honorable Barbara J. Rothstein

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON**

DAVID GARRET; and  
TLJ, LLC,

Plaintiffs,

vs.

MATERIA GROUP LLC; MATERIA  
GROUP INC.; DEREK MULLER;  
ANTHONY BERGIN; WILLIAM  
POWELL; JOHN MOTTA; and JOSEPH  
MOTTA,

Defendants.

**Case No.: 2:19-cv-01129-BJR**

**JOINT STATUS REPORT  
AND PROPOSED DISCOVERY  
PLAN**

Plaintiffs David Garret (“Garret”) and TLJ, LLC (“TLJ”), Defendant William Powell (“Powell”), and Defendants Materia Group LLC and Materia Group Inc. (“Materia Group”), Anthony Bergin, Derek Muller and Joseph Motta hereby submit the following Joint Status Report and Proposed Discovery Plan pursuant to Federal Rule of Civil Procedure 26(f), Local Civil Rule 26(f), and the Court’s Standing Order for Civil Cases assigned to Judge Rothstein.

1 Pursuant to the Court's Order, counsel for Plaintiffs, Defendants Powell and Materia Group met  
2 and conferred telephonically concerning these issues.

### 3 **NATURE AND COMPLEXITY OF THE CASE**

4  
5 *Plaintiffs' Statement.* This action involves a complaint by Garret and TLJ as a result of  
6 certain conduct by Bergin and the other Defendants that resulted in TLJ's intellectual property  
7 rights being infringed upon. In particular, Plaintiffs have filed a Complaint alleging copyright  
8 infringement, breach of duty, breach of trust/loyalty, breach of written agreement, conversion,  
9 trespass to chattels, fraud, fraudulent conveyance, professional negligence and declaratory relief.  
10 Plaintiffs are seeking compensatory damages, injunctive relief, declaratory relief as to the rights  
11 of the parties, and attorneys' fees.  
12

13  
14 *Defendant Powell's Statement.* Powell is an associate attorney at Baker & Hostetler LLP.  
15 Powell has represented both TLJ and Materia Group over time. Powell's relationship with TLJ  
16 is governed by contract (the retainer agreement dated September 16, 2015) that detailed that  
17 Powell and his firm would represent TLJ in connection with its trademark applications, brand  
18 protection, and clothing design protection for the LumberJock clothing brand. Powell's  
19 relationship with Materia Group is governed by contract (the retainer agreement letter dated  
20 August 3, 2016) that details that Powell and his firm would represent Materia Group in  
21 connection with its trademark applications, brand protection, and clothing design protection for  
22 the LumberJock, LumberUnion and LumberJill clothing brands. Powell denies any and all  
23 allegations, liabilities, and claims asserted by Plaintiffs. Powell has asserted affirmative defenses  
24 of lack of causation, comparative fault of others, contributory negligence, lack of standing,  
25  
26  
27  
28

1 mistake, statute of frauds, statute of limitations, insufficient process and service of process,  
2 fraud, illegality, release, waiver, estoppel, and laches.

3 *Defendant Materia Group's Statement.* Materia Group, Inc. is a Delaware corporation  
4 doing business in Seattle, WA. Materia Group, Inc. was converted from Materia Group, LLC, a  
5 Washington limited liability company. Materia Group is engaged in the business of apparel and  
6 accessories production and sale. Materia Group asserts that it is the rightful owner of the brand  
7 and designs connected with the Lumber Jock, Lumber Jill and Lumber Union clothing and  
8 accessory brands. Materia Group denies any and all allegations, liabilities, and claims asserted  
9 by Plaintiffs. Materia Group has asserted affirmative defenses of failure to state a claim, waiver,  
10 laches and estoppel, lack of damages, failure to mitigate, setoff, lack of causation, comparative  
11 fault, contributory fault, statute of frauds, statute of limitations, and insufficient service of  
12 process.  
13

14  
15  
16 *Defendant Anthony Bergin's Statement.* Bergin was a member of TLJ, LLC and is  
17 currently a shareholder of Materia Group, Inc. As more specifically set forth in his Answer to  
18 the Complaint, Bergin denies specific allegations in the Complaint, and all liabilities and claims  
19 asserted by Plaintiffs. Bergin has asserted affirmative defenses of failure to state a claim, waiver,  
20 laches and estoppel, lack of damages, failure to mitigate, setoff, lack of causation, comparative  
21 fault, contributory fault, statute of frauds, statute of limitations, and insufficient service of  
22 process.  
23

24  
25  
26 *Defendant Derek Muller's Statement.* Muller provided certain services related to the  
27 design of the logo and brand which is at issue in this matter. As more fully set forth in his  
28 Answer to the Complaint Muller denies specific allegations in the Complaint, and all liabilities

1 and claims asserted by Plaintiffs. Muller has asserted affirmative defenses of failure to state a  
 2 claim, waiver, laches and estoppel, lack of damages, failure to mitigate, setoff, lack of causation,  
 3 comparative fault, contributory fault, statute of frauds, statute of limitations, and insufficient  
 4 service of process.  
 5

6 *Defendant Joseph Motta's Statement.* Joseph Motta provided certain financing to TLJ,  
 7 LLC which was identified more fully in certain loan documents. Joseph Motta has just appeared  
 8 and has not yet filed an Answer to the Complaint. Joseph Motta anticipates filing an Answer  
 9 which denies certain allegations in the Complaint and all liabilities and claims asserted by  
 10 Plaintiffs. Joseph Motta further anticipates that he will include affirmative defenses in such  
 11 Answer consistent with the other named defendants.  
 12  
 13

#### 14 **1. PROPOSED DEADLINE FOR JOINT ADDITIONAL PARTIES**

15 Plaintiffs, Powell, Materia Group, Bergin, Muller and Joseph Motta propose that the  
 16 deadline for joining additional parties should be 60 days after the close of pleadings.

#### 17 **2. CONSENT TO MAGISTRATE JUDGE**

18 There is no consent to the assignment of a Magistrate Judge to these proceedings.

#### 19 **3. PROPOSED DISCOVERY PLAN**

20 A. Initial Disclosures. Three of the parties held their FRCP 26(f) conference on  
 21 September 30, 2019, but not all defendants participated in light of the service issues experienced  
 22 by Plaintiffs' process server as of September 30, 2019. Plaintiffs have provided defendants with  
 23 no documents pursuant to their initial disclosures.

24 B. Subjects, Timing, and Phasing of Discovery. Plaintiffs believe discovery will  
 25 likely involve subjects including TLJ's trademarks and Garret's use, development and ownership  
 26 of such markings in the clothing line; the business relationship between Garret and Bergin; the  
 27 management and operations of TLJ and Materia; the sales and revenue generated in connection  
 28 with TLJ's copyrights and business as compared to that of Materia; the actions taken by Bergin

1 to allegedly strip the intellectual property of TLJ and transfer it to Materia; the alleged fraudulent  
2 loans made by the Motta Defendants; the advertising and marketing of the copyrighted products  
3 by Bergin and Defendant Muller; communications between the parties; and related subjects.

4 Defendant Powell does not disagree with Plaintiffs' discovery views, but believes he too  
5 will need to conduct discovery concerning the issues raised in the complaint, specifically  
6 concerning the client relationships and the timing of certain information known by Plaintiffs.

7 Defendants Materia Group, Bergin, Muller and Joseph Motta concur and assert that they  
8 will also need to conduct discovery regarding the allegations in the complaint and specifically  
9 related to Garret's alleged development and ownership of markings, the default and foreclosure  
10 of the security provided for the Motta loans, the timing of certain information known by Plaintiffs,  
11 and Materia Group and Muller's design and use of brands for its products.

12 Discovery will be accomplished through interrogatories, requests for production, requests  
13 for admission, depositions, and third-party subpoenas.

14 C. Electronically Stored Information. The parties to this report conferred regarding  
15 Electronically Stored Information ("ESI") during their Rule 26(f) conference. The parties do not  
16 believe that this case will involve much ESI and do not believe an ESI protocol is required at this  
17 time. The parties agree to abide by the proportionality standard set forth in Fed. R. Civ. P.  
18 26(b)(2)(C) and consider in their discovery requests the nature of the claim, the relative ability of  
19 the parties to conduct discovery of ESI, and other such factors as may be relevant under the  
20 circumstances. The parties also agree to produce ESI in TIFF or PDF format with a companion  
21 text file, or, if not feasible, in native format. The parties anticipate production of electronically  
22 stored information and will coordinate regarding the parameters of productions.

23 D. Privilege Issues. The parties agree to proceed pursuant to Paragraph D.3 of this  
24 Court's Model ESI Protocol, which provides, in the event of production of a privileged  
25 document:

26 Information produced in discovery that is protected as privileged or  
27 work product shall be immediately returned to the producing party,  
28 and its production shall not constitute a waiver of such protection,

1 if: (i) such information appears on its face to have been  
2 inadvertently produced or (ii) the producing party provides notice  
3 within 15 days of discovery by the producing party of the  
4 inadvertent production.

5 In addition, the parties and their counsel agree to abide by RPC 4.4(b), which provides  
6 that a lawyer who receives a document relating to the representation of the lawyer's client and  
7 knows or reasonably should know that the document was inadvertently sent shall promptly notify  
8 the sender.

9 The parties agree that communications solely between litigation counsel in this matter and  
10 their clients need not be listed on the parties' respective privilege logs. Defendant Powell  
11 anticipates that there may be privilege issues given that Plaintiff Garret appears to have waived  
12 his privilege, whereas other defendants that are also clients of Powell do not waive their  
13 privileges.

14 E. Limitations on Discovery. The parties do not propose any changes to the  
15 limitations on the number of interrogatories or the number and duration of depositions set forth  
16 in the Federal and Local Civil Rules.

17 F. Discovery-Related Orders. The parties believe a Rule 26(c) protective order  
18 governing the production of trade secret or other confidential research, development, or  
19 commercial information is appropriate, and they will confer and attempt to reach agreement on  
20 terms of a stipulated order for the Court's approval.

#### 21 **4. CASE AND DISCOVERY MANAGEMENT**

22 A. Prompt Case Resolution. The parties have no specific proposals or agreements for  
23 prompt case resolution at this time, especially in light of the status of the pleadings.

24 B. Alternative Dispute Resolution. The parties propose mediation be completed by  
25 December 11, 2020.

26 C. Related Cases. The parties are aware of no related cases that need to be brought  
27 to the Court's attention.  
28

1 D. Discovery Management. In the event of a discovery dispute, the parties shall meet  
2 and confer in an effort to resolve that dispute. If the dispute is not resolved, appropriate motions  
3 will be filed with the Court.

4 E. Anticipated Discovery Sought. See paragraph 4(B).

5 F. Phasing Motions. The parties do not see the need to plan to phase any motions at  
6 this time.

7 G. Preservation of Discoverable Information. The parties will ensure, to the best of  
8 their abilities, preservation of discoverable information for purposes of the case.

9 H. Privilege Issues. See paragraph 4(D).

10 I. Model Protocol for Discovery of ESI. The parties will review and coordinate on  
11 discovery of ESI.

12 J. Alternatives to Model Protocol. See paragraph 5(I).

13 **5. DATE BY WHICH DISCOVERY CAN BE COMPLETED**

14 The parties expect that discovery in this case can be completed by October, 2020.

15 **6. BIFURCATION**

16 The parties do not believe that this matter should be bifurcated.

17 **7. PRE-TRIAL STATEMENTS AND PRE-TRIAL ORDERS**

18 The parties do not seek to dispense with the pretrial statements and pretrial order called  
19 for by Local Rules CR 16 (e), (h), (i), and (l), and 16.1.

20 **8. SUGGESTIONS OR SHORTENING OR SIMPLIFYING CASE**

21 No additional suggestions for shortening or simplifying the case are proposed by the  
22 parties at this time.

23 **9. DATE FOR TRIAL**

24 The parties anticipate that this case will be ready for trial on or about March 22, 2021.

25 **10. JURY OR NON-JURY TRIAL**

26 The Plaintiffs have requested a trial by jury.

27 **11. NUMBER OF DAYS FOR TRIAL**

1 The parties here are unable to estimate as to the number of days necessary for the trial at this  
2 time. They will propose the number of days by March 20, 2020.

3 **12. NAMES, ADDRESSES AND TELEPHONE NUMBERS OF TRIAL COUNSEL**

4 Plaintiffs' counsel's contact information is as follows:

5 J. Curtis Edmondson  
6 Law Offices of J. Curtis Edmondson, PLLC  
7 Venture Commerce Center  
8 3699 NE John Olsen Ave.  
9 Hillsboro, OR 97124-5815  
10 (503) 336-3749  
11 [jcedmondson@edmolaw.com](mailto:jcedmondson@edmolaw.com)

12 Defendant Powell's counsel's contact information is as follows:

13 Curt Roy Hinline and Carolyn Robbs Bilanko  
14 Baker & Hostetler LLP  
15 999 Third Ave., Suite 3600  
16 Seattle, WA 98104-4040  
17 (206) 332-1380  
18 [chinline@bakerlaw.com](mailto:chinline@bakerlaw.com)  
19 [cbilanko@bakerlaw.com](mailto:cbilanko@bakerlaw.com)

20 Defendants Materia Group LLC's, Materia Group, Inc.'s, Anthony Bergin's, Derek  
21 Muller's and Joseph Motta's counsel's contact information is as follows:

22 Michael T. Callan  
23 Peterson Russell Kelly Livengood PLLC  
24 10900 NE 4th Street, Suite 1850  
25 Bellevue, WA 98004-8341  
26 (425) 462-4700  
27 [mcallan@prklaw.com](mailto:mcallan@prklaw.com)

28 **13. TRIAL SCHEDULING COMPLICATIONS**

At this time, trial counsel is unaware of any dates on which they will have conflicts to be  
considered in setting a trial date.

**14. SERVICE ON REMAINING DEFENDANTS**



1 Defendant John Motta is deceased and Plaintiffs will seek leave to substitute the estate.

2 **15. SCHEDULING CONFERENCE**

3 Neither party requests a conference with the Court prior to entry of a Scheduling Order.

4 **16. CORPORATE DISCLOSURE STATEMENT**

5 TLJ filed its Corporate Disclosure Statement on July 25, 2019.

6 Materia Group filed its Corporate Disclosure Statement on October 7, 2019.

7 **17. PILOT PROJECT**

8 The parties do not wish to be part of the Pilot Project on Cameras in the Courtroom.

1 DATED this 6<sup>th</sup> day of January, 2020.

2 RESPECTFULLY SUBMITTED,

3 Law Offices of J. Curtis Edmondson, PLLC

Baker & Hostetler LLP

4  
5 By: /s/ J. Curtis Edmondson

By: /s/ Curt Roy Hinline

6 J. Curtis Edmondson, SBN 47395

Curt Roy Hinline, SBN 16317

7 Venture Commerce Center

999 Third Ave., Suite 3600

8 3699 NE John Olsen Ave.

Seattle, WA 98104-4040

9 Hillsboro, OR 97124-5815

(206) 332-1380

(503) 336-3749

[chinline@bakerlaw.com](mailto:chinline@bakerlaw.com)

[jcedmondson@edmolaw.com](mailto:jcedmondson@edmolaw.com)

Attorney for Defendant William Powell

10 Attorney for Plaintiffs

11  
12 Peterson Russell Kelly Livengood PLLC

13  
14 By: /s/ Michael T. Callan

15 Michael T. Callan, SBN 16237

16 Peterson Russell Kelly Livengood PLLC

17 10900 NE 4th Street, Suite 1850

18 Bellevue, WA 98004-8341

(425) 462-4700

[mcallan@prklaw.com](mailto:mcallan@prklaw.com)

19 Attorney for Defendants Materia Group, Bergin, Muller and Joseph Motta

**PROOF OF SERVICE**

Served on January 6, 2020 By CM/ECF to counsel of record:

Michael T. Callan, SBN 16237  
Peterson Russell Kelly Livengood PLLC  
10900 NE 4th Street, Suite 1850  
Bellevue, WA 98004-8341  
(425) 462-4700

[mcallan@prklaw.com](mailto:mcallan@prklaw.com)

Attorney for Defendants Materia Group, Bergin, Muller and Joseph Motta

Curt Roy Hinline, SBN 16317  
999 Third Ave., Suite 3600  
Seattle, WA 98104-4040  
(206) 332-1380

[chineline@bakerlaw.com](mailto:chineline@bakerlaw.com)

Attorney for Defendant William Powell

/s/ J. Curtis Edmondson  
J. Curtis Edmondson